

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

CARLOS A. VELTRUSKI,

Charging Party,

v.

STATE OF CALIFORNIA,

Respondent.

Case No. LA-CE-556-S

Administrative Appeal

PERB Order No. Ad-309-S

June 19, 2001

Appearances: Carlos A. Veltruski, on his own behalf; State of California (Department of Personnel Administration) by Linda M. Nelson, Labor Relations Counsel, for State of California.

Before Amador, Baker and Whitehead, Members.

DECISION

WHITEHEAD, Member: This case comes before the Public Employment Relations Board (PERB or Board) on a request by Carlos A. Veltruski (Veltruski) that the Board accept his late-filed notice of appeal.

On February 22, 2001,¹ a Board agent issued a partial dismissal of Veltruski's unfair practice charge. The appeal was due to be filed no later than March 19. Veltruski filed an appeal of the partial dismissal with PERB on March 20, one day late. The proof of service attached to the appeal was dated March 19, the appeal was postmarked March 20 by U.S. Express Mail and received by PERB on March 21.

In his appeal from the partial dismissal, Veltruski states that the reason for his late filing was "due to my severe state of depression and anxiety caused by new retaliation and new

¹All dates refer to 2001.

acts of discrimination" committed by various officials. On April 5, Veltruski submitted an additional explanation for his untimely filing. In this supplemental pleading, Veltruski stated that, although he brought the notice of appeal to the post office on March 19, it was given an untimely stamp date due to unanticipated post office procedures.

DISCUSSION

PERB Regulation 32136² provides that:

A late filing may be excused in the discretion of the Board for good cause only. A late filing, which has been excused, becomes a timely filing under these regulations.

The Board has found good cause exists where a party has demonstrated that a conscientious effort to timely file was made. (See, e.g., North Orange County Regional Occupational Program (1990) PERB Decision No. 807 [good cause existed in a late filing which resulted from exceptions being directed to the wrong PERB office]; Trustees of the California State University (1989) PERB Order No. Ad-192-H [inadvertent, incorrect use of a postage meter resulting in late delivery represented good cause to excuse a late filing]; and State of California (Department of Forestry and Fire Protection) (1998) PERB Order No. Ad-286-S [good cause found where party made a conscientious effort to timely file but inadvertently utilized an overnight mail delivery system not specified in PERB's regulation].)

When the late filing is caused by alleged physical illness, the party still must demonstrate a conscientious effort to timely file. (See, e.g., North Monterey County Unified School District (1996) PERB Order No. Ad-274; State of California (Department of Social Services) (2001) PERB Order No. Ad-308-S.)

²PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

In the case at bar, Veltruski has not met this burden. As to Veltruski's original reason for his late filing, although he stated it was due to depression and anxiety, he has not explained how that illness prevented him from making a conscientious effort to timely file.

Veltruski's supplemental reason for his late filing, i.e. that it was caused by unforeseen post office procedures, appears to be disingenuous. Veltruski presumably brought the notice of appeal to the post office on March 19, anticipating a timely filing. It is therefore difficult to understand how Veltruski had the prescience to include in his original papers a detailed, typed discussion explaining why the notice was untimely filed.

For these reasons, we find that no good cause has been shown to excuse this late filing.

ORDER

Carlos Veltruski's request to accept his late-filed notice of appeal in Case No. LA-CE-556-S is hereby DENIED.

Members Amador and Baker joined in this Decision.